

IN THE UNITED STATES DISTRICT COURT FOR

FILED

THE WESTERN DISTRICT OF OKLAHOMA MAY 14 2014

MICHAEL JAMES RODRIGUEZ,

Plaintiff,

vs.

OKLAHOMA COUNTY DETENTION
CENTER,

Defendant.

CARMEL J. SHINN, CLERK
U.S. DIST. COURT, WESTERN DIST. OKLA.
BY Sub DEPUTY

No. CIV-14-176-W

ORDER

On April 10, 2014, United States Magistrate Judge Gary M. Purcell, after conducting the preliminary screening required by title 28, section 1915A(a) of the United States Code, issued a Report and Recommendation in this matter and recommended inter alia that the complaint filed by plaintiff Michael James Rodriguez be dismissed without prejudice. Rodriguez, who is proceeding pro se and in forma pauperis, was advised of his right to object to the Report and Recommendation, see Doc. 7 at 8, but no objections have been filed within the allotted time.

Upon review of the record, the Court concurs with Magistrate Judge Purcell's suggested disposition of this matter and his recommendation that dismissal is warranted under title 28, sections 1915A(b) and 1915(e)(2)(B)(ii) of the United States Code because Rodriguez's complaint fails to state a claim upon which relief may be granted under title 42, section 1983 of the United States Code.

Defendant Oklahoma County Detention Center is not a suable entity, see Ketchum v. Albuquerque Police Department, 1992 WL 51481 *2 (10th Cir. 1992)(neither police department nor detention center suable entity under section 1983), and despite the

opportunity to amend his complaint to name the appropriate defendant, Rodriguez neither filed an amended complaint nor sought additional time to do so.


The Court further concurs that the dismissal of this action should count as one "strike" under title 28, section 1915(g) of the United States Code. See Hafed v. Federal Bureau of Prisons, 635 F.3d 1172, 1176 (10th Cir. 2011)(under Prison Litigation Reform Act, prisoner obtains "strike" for purposes of future in forma pauperis eligibility when action is dismissed for failure to state claim upon which relief may be granted).

Accordingly, the Court

(1) ADOPTS the Report and Recommendation [Doc. 7] issued on April 10, 2014;
and

(2) DISMISSES this matter without prejudice.

ENTERED this 14th day of May, 2014.


LEE R. WEST
UNITED STATES DISTRICT JUDGE